April 19, 1999

Mr. Hugh Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR99-1044

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124635.

The City of Fort Worth (the "city") received a request for "a copy of the report filed by Officer Cox, and any other information contained within the file" involving an April 19, 1997 accident that resulted in the death of a particular person. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that section 552.103 of the Government Code excepts from disclosure the requested information. Section 552.103(a) of the Government Code reads as follows:

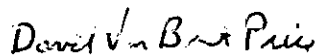> (a) Information is excepted from [required public disclosure] if it is information:
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>> (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
>>
>> (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.,* 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.,* 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). You state that "Mr. Romero's clients are in litigation with the City of Fort Worth concerning the accident." You state that this is shown by Exhibit "C," the "Original Cross-Action of Arturo Garza and Juanita Garza against the City of Fort Worth." In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested information therefore may be withheld from public disclosure with the following exceptions.

We note that the information contains correspondence between the city and the opposing party. If the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .352. In addition, section 552.103 does not apply to court-filed documents or to the peace officer's accident report. *See* V.T.C.S. art. 6701d, § 47, *Star-Telegram v. Walker,* 834 S.W.2d 54 (Tex. 1992).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

David Van Brunt Price
Assistant Attorney General
Open Records Division

DVP\nc

Ref: ID# 124635

Encl: Submitted documents

cc: Mr. Philip Romero
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      (w/o enclosures)